Exhibit B to the Declaration of David H. Kramer

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Oct. 3. 2005 5:00PM JAMS No.2929 P. 3/27

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Discovery Referee

(ENDORSED)
FILED
SEP 29 2005
KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY M. HIJDUK DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

RECEIVED SEP 30 2005

AFFINITY ENGINES, INC., a Delaware Corporation, Plaintiff, vs. GOOGLE INC., a Delaware Corporation, et al., Defendants.	Case No. 104CV020368 **RECOMMENDATION AND ~~(PROPOSED)~~ ORDER GRANTING GOOGLE'S MOTION TO ENFORCE EXISTING PROTECTIVE ORDER**

Defendant Google Inc., ("Google") has filed a motion to enforce the Court's existing protective order of May 27, 2005 regarding the depositions of Google's co-founders and co-Presidents, Larry Page ("Page") and Sergey Brin ("Brin"). Plaintiff Affinity Engines, Inc. ("Plaintiff" or "AEI") has filed an opposition to the motion. The motion was heard telephonically on August 22, 2005 by referee Hon. Read Ambler (Ret.). The referee has considered the papers and the arguments of counsel.

Background

On May 27, 2005, the Court entered an order granting Google's motion for protective order regarding the depositions of Page and Brin ("Order"). The Order provides, *inter alia*:

Defendant's motion for protective order, requiring [Plaintiff] to take the depositions of Marrissa Mayer, Orkut, and Google's PMK take place before the depositions of Page and Brin is GRANTED. Defendant's motion for protective order limiting the deposition of Page and Brin to the issues of (1) ownership of the software at issue; (2) defendant's hiring of Buyukkokten; and (3) defendant' decision to convert Buyukkokten's prototype software, which plaintiff claims it owned, is GRANTED.

Plaintiff took and completed Marissa Mayer's deposition on June 25, 2005. On June 22-24, 2005 Plaintiff commenced but did not complete Buyukkokten's deposition. Beginning on June 30, 2005, the parties disagreed regarding whether the continuation of Buyukkokten's deposition would impact Plaintiff's taking of the depositions of Page and Brin. On July 6, 2005, Plaintiff formally noticed the depositions of Sergey Brin and Larry Page for August 24 and August 26. On July 15, 2005, Plaintiff served upon Google an amended notice for the deposition of Google, which includes 38 topics for deposition. On August 4, 2005, Plaintiff obtained deposition testimony from Google on five of the topics. The topics upon which Plaintiff deposed Google cover some, but not all, of the three specified areas upon which the Order allows Plaintiff to question Brin and Page.

On August 9, 2005, Plaintiff filed a motion to compel testimony responsive to Plaintiff's amended notice of deposition of Google. On August 18, 2005, counsel for Google sent an e-mail to counsel for Plaintiff asserting that because the Buyukkokten deposition was not closed, and the corporate deposition of Google had not been completed, Plaintiff's attempt to depose Page and Brin was premature under the Order.

Although the disagreements regarding the scheduling of the Page and Brin depositions began in late June, the issue was first presented to the referee on August 19th by way of Plaintiff's noticed *ex parte* telephonic request for a protective order prohibiting the depositions of Page and Brin prior to completion of the depositions of Buyukkokten and Google. The referee treated the request as an *ex parte* request for order shortening time, and set the motion to be heard on August 22, 2005. The referee set an abbreviated briefing schedule with which the parties complied.

The referee has considered the papers and the arguments of counsel.

Discussion

The Order requires Plaintiff to "take" the deposition of Ms. Meyer, Orkut Buyukkokten and Google's PMK before the depositions of Page and Brin. At least in the present context, the referee understands the Order to require Plaintiff to complete the depositions of Meyer, Buyukkokten and Google--at least as to the three topics iterated in the Order--prior to deposing Page and Brin. Based upon the papers and the argument presented during the hearing it is clear that Plaintiff has not completed the depositions of Google or Buyukkokten. For this reason, Plaintiff's attempt to depose Page and Brin on August 24 and 26, 2005 is in contravention of the Order. Accordingly, the referee recommends that Google's motion to enforce the Court's existing protective order of May 27, 2005 regarding the depositions of Page and Brin be granted.

Hours Spent, Fees Charged and Recommended Allocation

The referee has spent 3.5 hours on this motion, billed at the rate $700/hr.; George Delaney, the agreed research attorney, has spent 2.5 hours on this motion, billed at the rate $150/hr.; the parties have been billed a JAMS administrative fee of $300; and there are conference phone charges to be billed hereafter.

It is recommended that the fees be allocated 50% to each party.

RECOMMENDATIONS

It is respectfully recommended that the court adopt the recommendations set forth below:

1. That the motion to enforce the Court's existing protective order of May 27, 2005 regarding the depositions of Page and Brin be granted.
2. That the JAMS fees and charges as set forth above for this motion be allocated 50% to each party.

Dated: August 22, 2005

Hon. Read Ambler (Ret.)
Referee

ORDER

Having read the report of referee set forth above, and good cause appearing, the recommendations set forth in the report are each approved and made orders of this court.

IT IS SO ORDERED.

Dated: Sept. 29, 2005

Hon. William J. Elfving
Judge of the Superior Court

PROOF OF SERVICE BY FACSIMILE AND MAIL

I, Derek Ryan, not a party to the within action, hereby declare that on August 22, 2005 I served the attached Recommendation and (Proposed) Order Granting Google's Motion to Enforce Existing Protective Order on the parties in the within action by mailing and faxing true copies thereof, at San Jose, California, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose, CALIFORNIA on August 22, 2005.

Signature